

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Beth Arnold on 6/17/2010.

The application has been amended as follows:

Claim 75 was canceled.

The following is an examiner's statement of reasons for allowance: the claimed methods of producing a cultured tissue construct in the absence of undefined animal organ or tissue extracts (e.g. fetal bovine serum) are not taught or suggested by the prior art. Previously, it had been thought that the inclusion of serum had been necessary to produce such a tissue construct throughout the culturing of the claimed cells (e.g. see Parentau et al, 5,712,163, of record). Applicants have solved the problem by expanding the claimed cells in media containing serum (see Example 1 of the instant specification), but removing serum from the media upon culturing the cells for creation of the tissue construct (e.g. Examples 15 and 16, which use cells from Example 1).

***Double Patenting***

Claims 68, 73, 74, 76 and 77 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 31, 33 and 39-51 of copending Application No. 11/932,052. **See the Office Actions dated 2/4/2009 and 9/16/2009.**

However, this is the only remaining rejection in the earlier filed application, and thus according to MPEP §804 I B. 1., this rejection is withdrawn.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Burkhardt whose telephone number is (571)272-2915. The examiner can normally be reached on M-F 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Weitach can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Burkhardt/  
Primary Examiner, Art Unit 1633